AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-010 Definitions. The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

"Act" means the Consumer Loan Act, chapter 31.04 RCW.

"Affiliate" means any person who controls, is controlled by, or is under common control with another.

"Annual percentage interest rate" means the rate of interest specified in the note.

"Annual percentage rate" has the same meaning as defined in Regulation Z, 12 C.F.R. Section 226 et seq.

"Bank Secrecy Act" means the Bank Secrecy Act (BSA), 31 U.S.C. 1051 et seq. and 31 C.F.R. Section 103.

"Bond substitute" means unimpaired capital, surplus and qualified long-term subordinated debt.

"Borrower" means any natural person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

"Common ownership" exists if an entity or entities possess an ownership or equity interest of five percent or more in another entity.

"Department" means the department of financial institutions.

"Depository Institutions Deregulatory and Monetary Control Act" means the Depository Institutions Deregulatory and Monetary Control Act of 1980 (DIDMCA), 12 U.S.C. § 1735f-7a.

"Director" means the director of the department of financial institutions or his or her designated representative.

"Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. section 1691 and Regulation B, 12 C.F.R. Section 202.

"Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Section 1681 et seq.

"Fair Debt Collection Practices Act" means the Fair Debt Collection Practices Act, 15 U.S.C. sections 1692 through 1692o.

"Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. section 45(a).

"Filing" means filing, recording, releasing or reconveying mortgages, deeds of trust, security agreements or other documents, or transferring certificates of title to vehicles.

"Gramm-Leach-Bliley Act (GLBA)" means the ((~~Gramm-Leach-Bliley Act (GLBA)~~)) Financial Modernization Act of 1999, 15 U.S.C. ((~~sections 6801 through 6809 and 6821 through 6827~~)) Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

"Home Mortgage Disclosure Act" means the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. sections 2801 through 2810 and 12 C.F.R. Section 203.

"Insurance" means life insurance, disability insurance, property insurance, insurance covering involuntary unemployment and such other insurance as may be authorized by the insurance commissioner in accordance with Title 48 RCW.

"Lender" means any person that extends money to a borrower with the expectation of being repaid.

"License" means a license issued under the authority of this chapter with respect to a single place of business.

"Licensee" means a person who holds one or more current licenses.

"Live check" means a loan solicited through the mail in the form of a check, which, when endorsed by the payee, binds the payee to the terms of the loan agreement contained on the check.

"Loan" means a sum of money lent at interest or for a fee or other charges and includes both open-end and closed-end transactions.

"Loan originator" means the same as in RCW 19.146.010.

"Long-term subordinated debt" means for the purposes required in RCW 31.04.045 outstanding promissory notes or other evidence of debt with initial maturity of at least seven years and remaining maturity of at least two years.

"Material litigation" means proceedings that differ from the ordinary routine litigation incidental to the business. Litigation is ordinary routine litigation if it ordinarily results from the business and does not deviate from the normal business litigation. Litigation involving five percent of the licensee's assets or litigation involving the government would constitute material litigation.

"Mortgage broker" means the same as in RCW 19.146.010 except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same transaction.

"Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage loan originators.

"Out-of-state licensee" means any licensee that does not maintain a physical presence within the state.

"Person" includes individuals, partnerships, associations, trusts, corporations, and all other legal entities.

"Principal" means either (1) any person who controls, directly or indirectly through one or more intermediaries, a ten percent or greater interest in a partnership, company, association or corporation; or (2) the owner of a sole proprietorship.

"Principal amount" means the loan amount advanced to or for the direct benefit of the borrower.

"Principal balance" means the principal amount plus any allowable origination fee.

"RCW" means the *Revised Code of Washington.*

"Real Estate Settlement Procedures Act" means the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Sections 2601 et seq., and Regulation X, 24 C.F.R. Sections 3500 et seq.

"Records" mean books, accounts, papers, records and files, no matter in what format they are kept, which are used in conducting business under the act.

"S.A.F.E. Act" means the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, Title V of the Housing and Economic Recovery Act of 2008 ("HERA"), Public Law No. 110-289, effective July 30, 2008.

"Senior officer" means an officer of a consumer loan company at the vice-president level or above.

"Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balance of the principal amount outstanding for the time outstanding. Each payment shall first be applied to any unpaid penalties, fees, or charges, then to accumulated interest, and last to the unpaid balance of the principal amount until paid in full. In using such method, interest shall not be payable in advance or compounded.

"State" means the state of Washington.

"Subsidiary" means a person that is controlled by another.

"Telemarketing and Consumer Fraud and Abuse Act" means the Telemarketing and Consumer Fraud and Abuse Act, 15 U.S.C. § 6101 to 6108.

"Telephone Sales Rule" means the rules promulgated in 16 C.F.R. Part 310.

"Third-party service provider" means any person other than the licensee who provides goods or services to the licensee in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

"Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sections 1601 et seq., and Regulation Z, 12 C.F.R. Sections 226 et seq.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-230 Do I need to apply for a consumer loan license if I am lending money in the state of Washington? ((~~In order to make credit available to high-risk borrowers the act authorizes interest rates up to twenty-five percent for certain types of loans, subject to the requirements of the act.~~)) If you are in the business of making secured or unsecured loans of money or credit at rates above those allowed under chapter 19.52 RCW, the Usury Act, and you do not qualify for an exception under RCW 31.04.025, you must hold a license to avoid noncompliance with the Usury Act. The current allowable rate under RCW 19.52.020 is twelve percent or less but that rate may change.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-235 Is there a maximum rate of interest allowed under the act? ((~~The legislature authorized interest rates up to twenty-five percent for loans made under the act in order to make credit available to high risk borrowers.~~)) Yes. Interest rates not exceeding twenty-five percent per annum are allowed.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-320 What is the amount of the bond required for my consumer loan license? (1) **Loans not secured by real estate.** For licensees making loans not secured by real property, the penal sum of the bond is one hundred thousand dollars for each office up to five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars.

(2) **Loans secured by real estate.** For a licensee making loans secured by real property, the penal sum of the bond is four hundred thousand dollars ((~~for the first five locations. For each additional branch office over five, the amount of the bond must be increased by ten thousand dollars, up to a maximum bond amount of seven hundred thousand dollars. For example:~~)).

((~~Number of Offices~~	~~Penal Sum of Bond - Licensee making non real estate loans~~	~~Penal Sum of Bond - Licensee making real estate loans~~
~~1~~	~~$100,000~~	~~$400,000~~
~~2~~	~~$200,000~~	~~$400,000~~
~~3~~	~~$300,000~~	~~$400,000~~
~~4~~	~~$400,000~~	~~$400,000~~
~~5~~	~~$500,000~~	~~$400,000~~
~~6~~	~~$510,000~~	~~$410,000~~
~~7~~	~~$520,000~~	~~$420,000~~
~~8~~	~~$530,000~~	~~$430,000~~
~~9~~	~~$540,000~~	~~$440,000~~

((~~Number of Offices~~	~~Penal Sum of Bond - Licensee making non real estate loans~~	~~Penal Sum of Bond - Licensee making real estate loans~~
~~10~~	~~$550,000~~	~~$450,000~~))

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-330 Does the surety bond need to reflect coverage for licensee and its W-2 employees and independent contractors? Yes. The surety bond ((~~needs to~~)) must cover both the licensee and all ((~~types of~~)) employees and independent contractors working for the licensee. ((~~If a licensee has independent contractors, exclusive or otherwise, the bond needs to cover them, as well as employees of the licensee.~~))

NEW SECTION

WAC 208-620-511 What is the disclosure required under RCW 19.144.020? See WAC 208-600-200.

AMENDATORY SECTION (Amending WSR 06-04-053, filed 1/27/06, effective 2/27/06)

WAC 208-620-560 What restrictions are there for charging fees on junior lien loans other than the loan origination fee when acting as a lender or correspondent lender? (1) **Filing fees.** A licensee cannot charge or collect any funds from the borrower for the cost of filing, as defined in WAC 208-620-010, or for any other fees paid or to be paid to public officials, unless such charges are paid or are to be paid within one hundred eighty days by the licensee to public officials or other third parties for such filing. Any fee a licensee collects for releasing or reconveying the security for the obligation must be paid to an unrelated third party.

(2) **Dishonored check fees.** A licensee may not charge or collect a fee in excess of twenty-five dollars for a check returned unpaid by the bank drawn upon. Only one fee may be collected with

respect to a particular check even if it has been redeposited and returned more than once.

(3) **Fees for third-party services.** A licensee may not charge or collect any fee to be paid to a third-party service provider, as defined in WAC 208-620-010, in excess of the actual costs paid or to be paid. A licensee may charge the borrower for costs of allowable third-party services as provided by RCW 31.04.105(3) at the time of application for the loan or at any time thereafter except as prohibited.

(4) **Credit and noncredit insurance.**

(a) Except for the transaction described in (b) of this subsection, a licensee may include the premiums for credit and noncredit insurance in the principal amount of the loan, provided that purchase of the insurance is not required to obtain a loan and that this fact is disclosed to the borrower in writing and the borrower's confirmation is obtained by signature on the disclosure form.

(b) A licensee may not sell single premium credit insurance to a borrower at the inception of coverage unless the sale is in compliance with chapter 48.18 RCW.

(5) **Fees on existing loans.** Unless otherwise preempted under the Depository Institutions Deregulatory and Monetary Control Act, if a licensee makes a new loan or increases a credit line within one hundred twenty days after originating a previous loan or credit line to the same borrower, the origination fee on the new loan or increased credit line shall be limited as follows:

(a) The licensee may charge an origination fee only on that part of the new loan not used to pay the amount due on the previous loan;

(b) The licensee may charge an origination fee only on the difference between the amount of the existing credit line and the increased credit line;

(c) The limits in (a) and (b) of this subsection do not apply if the licensee refunds the origination fee on the existing loan or credit line.

(6) <u>**Discount points.** A licensee may not collect a fee from the borrower for lowering the interest rate unless the interest rate is actually reduced.</u>

<u>(7)</u> **Administrative fees.** A licensee may not collect a document preparation fee, a processing fee or a courier fee unless paid to an unrelated third party and agreed to in advance by the borrower.

((~~(7)~~)) <u>(8)</u> **Prepayment penalty.** A licensee may not collect a prepayment penalty on the following loans:

(a) Any nonmortgage loan made at rates authorized by the act; or

(b) Any <u>adjustable rate residential mortgage loan, except as allowed by RCW 19.144.040; or</u>

<u>(c) Any</u> junior lien mortgage loan made at rates authorized by the act; or

((~~(c)~~)) <u>(d)</u> Any loan made by a licensee that is not a "creditor" under DIDMCA.

NEW SECTION

WAC 208-620-565 What fees am I allowed and not allowed to charge or receive when acting as a broker under the act? (1) When acting as a broker under the act, you are allowed to:

(a) Charge and collect a broker's fee pursuant to WAC 208-620-515 (1)(b).

(b) Receive a yield spread premium (YSP). You must disclose the YSP as a dollar amount or dollar amount range on the good faith estimate, and as a dollar amount on the settlement statement.

(c) Charge a processing fee.

(2) When acting as a broker under the act, you are NOT allowed to:

(a) Charge or receive fees on discount points;

(b) Charge or receive a loan origination fee in addition to a broker's fee; or

(c) Charge or receive an underwriting fee.

AMENDATORY SECTION (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-611 What federal guidance has the director adopted for use by the department in determining if a violation under RCW 31.04.027 has occurred? The director has adopted:

((~~(1) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators Guidance on Nontraditional Mortgage Product Risks; and~~

~~(2) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators Statement on Subprime Mortgage Lending.~~)) (1) The Conference of State Bank Supervisors and American Association of Residential Mortgage Regulators "*Guidance on Nontraditional Mortgage Product Risks*" (released November 14, 2006); and

(2) The Conference of State Bank Supervisors, American Association of Residential Mortgage Regulators, and National Association of Consumer Credit Administrators "*Statement on Subprime Mortgage Lending*," effective July 10, 2007 (published in the Federal Register at Vol. 72, No. 131).

NEW SECTION

WAC 208-620-612 What must I do to comply with the federal guidelines on nontraditional mortgage loan product risks and statement on subprime lending? You must adopt written policies and procedures implementing the federal guidelines. The policies and procedures must be maintained as a part of your books and records and must be made available to the department upon request.

NEW SECTION

WAC 208-620-613 When I develop policies and procedures to implement the federal guidelines, what topics must be included? (1) The policies and procedures must include, at a minimum, underwriting standards, risk management, consumer protection, and control systems. If you only broker loans under your CLA license, your policies and procedures must comply with WAC 208-660-XXX. For purposes of this section, the definition of "subprime" and "subprime loans" is taken from the *2001 Interagency Expanded Guidance for Subprime Lending Programs* (an attachment to SR 01-4 (GEN), January 31, 2001, by the Board of Governors of the Federal Reserve System, Division of Banking, Supervision and Regulation).

(a) Underwriting standards. To ensure that underwriting standards are consistent with prudent lending practices, the underwriting standards should include, at a minimum, an analysis of borrower characteristics, loan product attributes, and the borrower's ability to repay the obligation.

(i) Analysis of borrower characteristics. The analysis must include tolerances for combining borrowers with certain characteristics with certain nontraditional loan products.

The criteria or range of reasonable tolerances should consider the characteristics listed in the *2001 Interagency Expanded Guidance for Subprime Lending Programs*.

(ii) Loan product attributes. Products with the following attributes, when combined with the borrower characteristics above result in higher risk. The risks are increased if borrowers are not adequately informed of the product features and risks.

- Low initial payments based on a fixed introductory rate that expires after a short time and then adjusts to a variable index rate plus a margin. Because initial and subsequent monthly payments are based on these low introductory rates, a wide initial spread means that borrowers are more likely to experience negative amortization, severe payment shock, and an earlier than scheduled recasting of monthly payments. Loans made to subprime borrowers must not contain any provisions that may lead to negative amortization.
- Very high or no limits on how much the payment amount or the interest rate may increase.

● Limited or no documentation of the borrower's income. Stated income is only acceptable if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Licensees generally must be able to readily document income using recent W-2 statements, pay stubs, or tax returns. An exception to this is when the loan product underwriting itself contemplates reduced documentation (for example, FHA loans).

● Substantial prepayment penalties or prepayment penalties that extend beyond sixty days prior to the date the interest rate will reset.

● Simultaneous second lien loans. When features are layered, mitigating factors should be present to support the underwriting decision and the borrower's repayment capacity.

(iii) Ability to repay. For all nontraditional mortgage loan products, the analysis of a borrower's repayment capacity must include an evaluation of their ability to repay the debt by final maturity at the fully indexed rate, assuming a fully amortizing repayment schedule. In addition, for prime borrowers qualifying for loan products that permit negative amortization, the repayment analysis must be based on the initial loan amount plus any balance increase that may accrue from the negative amortization provision. The analysis should avoid over reliance on credit scores as a substitute for income verification. The higher a loan's credit risk, either from borrower characteristics or loan features, the more important it is to verify the borrower's income, assets, and outstanding liabilities.

(b) Risk management. The scope of the risk management activities should be determined by the volume of nontraditional mortgages originated or used as investment. Licensees that target subprime borrowers through tailored marketing, underwriting standards, and risk selection must ensure that such programs do not feature terms that could become predatory or abusive. Policy topics should include, at a minimum:

(i) Acceptable product attributes;

(ii) Production, sales and securitization practices;

(iii) Limits on risk layering. When features are layered, licensees should demonstrate that mitigating factors support the underwriting decision and the borrower's repayment capacity. Mitigating factors could include higher credit scores, lower LTV and DTI ratios, significant liquid assets, mortgage insurance, or other credit enhancements;

(iv) Growth and volume limits by loan type;

(v) Performance measures. Incentive programs should not produce high concentrations of nontraditional products. Design performance measures and reporting systems that provide early warning for increased risk;

(vi) Management reporting and quality control. Focus on the high risk lending activities. Monitor and document compliance with underwriting standards. Quality control should include regular audits of nontraditional loan products. Perform due diligence in establishing and maintaining relationships with third party originators. Third party originations must meet the underwriting standards. Document and respond in writing to all complaints. Take immediate remedial action which could include more thorough application reviews, more frequent reunderwriting, or terminating the third party originator;

(vii) Secondary market activity. The risk management practices should be commensurate with the nature and volume of activity and should include contingency planning for response to reduced demand in the secondary market. Establish a policy on repurchase practices.

(c) Consumer protection.

Communication with borrowers. Providers must focus on information important to consumer decision making; highlight key information so that it will be noticed; employ a user-friendly and readily navigable format for presenting the information; and use plain language, with concrete and realistic examples. Comparative tables and information describing key features of available loan products, including reduced documentation programs, also may be useful for consumers. Specifically:

- Promotional materials and other product descriptions must provide information about the costs, terms, features, and risks of nontraditional mortgages that can assist consumers in their product selection decisions.
- Licensees must apprise borrowers of potential increases in payment obligations. The information should describe when structural payment changes will occur and what the new payment would be or how it was calculated.
- If negative amortization is possible under the terms of a nontraditional mortgage product, borrowers must be advised of the potential for increasing principal balances and decreasing home equity as a consequence of the borrower making minimum payments.
- Borrowers must be alerted to the fact that the loan has a prepayment penalty and the amount of the penalty.
- Borrowers must be made aware of any pricing premium based on reduced documentation.
- Monthly statements must provide information that enables borrowers to make informed payment choices, including an explanation of each payment option available and the impact of that choice on loan balances. For example, the monthly payment statement must contain an explanation, if applicable, next to the minimum payment amount that making this payment would result in an increase to the borrower's principal loan balance.

(d) Control standards.

(i) Actual practices must be consistent with the written policies and procedures. Employees must be trained in the policies and procedures and performance monitored for compliance. Incentive programs should not produce high concentrations of nontraditional products. Performance measures and reporting systems should be designed to provide early warning of increased risk.

(ii) Reporting to DFI. In a separate written document, as prescribed by the director and submitted with the consolidated annual report, every licensee must submit information regarding the offering of nontraditional mortgage loan products as prescribed by rule.

<u>AMENDATORY SECTION</u> (Amending WSR 08-15-125, filed 7/22/08, effective 8/22/08)

WAC 208-620-630 What are the advertising restrictions, and what are some examples of those restrictions? (1) **Licensees are prohibited from advertising with envelopes or stationery that contain an official-looking emblem designed to resemble a government mailing or that suggest an affiliation that does not exist. What are some examples of emblems or government-like names, language, or nonexistent affiliations that will violate the state and federal advertising laws?** Some examples include, but are not limited to:

(a) Characterizing products as "government loan programs," "government-supported loans," or other words that may mislead a consumer into believing that the government is guaranteeing, endorsing, or supporting the advertised loan product. Using the words "FHA loan," "VA loan," or words for other products that are in fact endorsed or sponsored by a federal, state, or local government entity is allowed.

(b) An official-looking emblem such as an eagle, the Statue of Liberty, or a crest or seal that resembles one used by any state or federal government agency.

(c) Envelopes designed to resemble official government mailings, such as IRS or U.S. Treasury envelopes, or other government mailers.

(d) Warnings or notices citing government codes or form numbers not required by the U.S. Postmaster to be shown on the mailing.

(e) The use of the term "official business," or similar language implying official or government business, without also including the name of the sender.

(f) Any suggestion or representation that the solicitor is affiliated with any agency, bank, or other entity that it does not actually represent.

(2) **When I am advertising interest rates, the act requires me to conspicuously disclose the annual percentage rate (APR) implied by the rate of interest. What does it mean to "conspicuously" disclose the APR?** ((~~The type size of the APR must be the same size or larger than any other rates stated in the advertisement.~~)) <u>The required disclosures in your advertisement must be reasonably understandable. Consumers must be able to see, read, or hear, and understand the information. Many factors, including the size, duration, and location of the required disclosures, and the background or other information in the advertisement, can affect whether the information is clear and conspicuous. This requirement applies to all mandatory disclosures. The disclosure of the APR</u>

must be at least equivalent to any other rates disclosed in the advertisement.

(3) **The act prohibits me from advertising an interest rate unless that rate is actually available at the time of the advertisement. How may I establish that an advertised interest rate was "actually available" at the time it was advertised?** Whenever a specific interest rate is advertised, the licensee must retain a copy of supporting rate information, and the APR calculation for the advertised interest rate.

(4) **Must I quote the annual percentage rate when discussing rates with a borrower?** Yes. You must quote the annual percentage rate and other terms of the loan if you give an oral quote of an interest rate to the borrower. TILA's Regulation Z, 12 C.F.R., part 226.26 provides guidance for using the annual percentage rate in oral disclosures.

(5) **May a licensee advertise rates or fees as the "lowest" or "best"?** No. Rates described as "lowest," "best," or other similar words cannot be proven to be actually available at the time they are advertised. Therefore, they are a false or deceptive statement or representation prohibited by RCW 19.146.0201(7).

(6) **May I solicit using advertising that suggests or represents that I am affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, when I am not; or that I am an entity other than who I am?** No. It is an unfair and deceptive act or practice and a violation of the act for you to suggest or represent that you are affiliated with a state or federal agency, municipality, federally insured financial institution, trust company, building and loan association, or other entity you do not actually represent; or to suggest or represent that you are any entity other than who you are.

(7) **If I advertise using a borrower's current loan information, what must I disclose about that information?** When an advertisement includes information about a borrower's current loan that you did not obtain from a solicitation, application, or loan, you must provide the borrower with the name of the source of the information.

(8) **Is it a violation to advertise that third-party services are "free" when the licensee has paid for the services?** Yes. Advertising using the term "free," or any other similar term or phrase that implies there is no cost to the applicant is deceptive because you can recover the cost of the purportedly "free" item through the negotiation process. This is a violation of RCW 19.146.0201 (2), (7), and (11). See the Federal Trade Commission's *Guide Concerning Use of the Word "Free" and Similar Representations*, available at http://www.ftc.gov/bcp/guides/free.htm, 16 C.F.R. § 251.1(g) (2003).